

2010 VERMONT BUSINESS INCOME TAX RETURN INSTRUCTIONS

(For Subchapter S Corporations, Partnerships, and Limited Liability Companies)

Form Summary List: (Check for the latest revisions at our website: <http://tax.vermont.gov>)

Form S-1 Registration For use by all taxable entities registering for a Vermont tax account.

Form BI-471 Vermont Business Income Tax Return For use by those entities not filing federally as a C Corporation to calculate Vermont business income tax liability. These entities include Subchapter S Corporations, Partnerships and Limited Liability Companies that elect to be treated as S-Corps or Partnerships for federal filing purposes.

FORM BI-471 IS THE FIRST PAGE OF EVERY RETURN AND THE RETURN IS INCOMPLETE WITHOUT IT.

Form BI-472 Subchapter S Corporation Schedule For use by those entities filing Federal Form 1120S and having Vermont nonresident members to calculate net income apportioned and allocated to Vermont.

Form BI-473 Partnership/Limited Liability Company Schedule For use by those entities filing Federal Form 1065/1065-B and having Vermont nonresident members to calculate net income apportioned and allocated to Vermont.

Form BA-402 Apportionment & Allocation Schedule For use by all taxable entities having activity (income or losses) in Vermont and at least one other state/province.

Form BA-403 Application for Extension of Time to File Vermont Corporate/Business Income Tax Return For use by those entities requesting more time to file their Vermont Corporate or Business Income Tax Return.

Form BA-404 Tax Credits Earned, Applied, Expired, and Carried Forward For use by those entities awarded Economic Advancement Tax Incentive (EATI) Credits or claiming credit incentives for New Jobs; Charitable Housing; Rehabilitation of

Certified Historic Buildings; Older or Historic Buildings Rehabilitation; Affordable Housing; Platform Lifts, Elevators, Sprinkler Systems; Code Improvements to Commercial Buildings; Business Solar Energy Investments or Qualified Sale of Mobile Home Park.

Form BA-405 Expired EATI Credits: Annual Activity Report For use by entities for each of the six years following the end of the EATI authorization period.

Form BA-410 Affiliation Schedule For use by those entities which are members of an affiliated group desiring to file Vermont income tax returns on a consolidated basis as permitted by the Internal Revenue Code.

Form WH-435 Estimated Income Tax Payments For Nonresident Shareholders, Partners, or Members For use by those entities making estimated tax payments for its non-Vermont shareholders, partners or members, as required by 32 V.S.A. §§5914 & 5920. See Technical Bulletins 05 and 06 for details.

Schedule K-1VT Shareholder's, Partner's or Member's Information For all shareholders, partners or members summarizing the Vermont net taxable income, Vermont nonresident estimated payments, all eligible credits, and adjustment due to Vermont's disallowance of IRS "bonus" depreciation.

Note: Distribution of nonresident estimated payments will not happen if Schedule K-1VTs are not attached and correct.

VT Technical Bulletins 5 & 6 (TB-05 & TB-06) Detailed information about the requirements for entities to make estimated payments on behalf of their non-Vermont-resident shareholders, partners and members.

Who Must File

Effective for tax years beginning on or after January 1, 1997, every Subchapter S Corporation, Partnership and Limited Liability Company which engages in activities in Vermont must file a return with the Commissioner of Taxes. **This includes entities receiving income as a shareholder, partner or member.**

NOTE: Single member LLCs which have elected to be classified for federal purposes as disregarded entities and report their entity's activity on Form 1040, Schedule C are not required to file Form BI-471.

Dates for Filing and Payments

Subchapter S Corporation, Partnership and Limited Liability Company returns are due on the date prescribed for filing under the Internal Revenue Code. For calendar year Subchapter S Corporations, this date will generally be March 15th. For fiscal year Subchapter S Corporations, the return is due the 15th day of the 3rd month following the end of the fiscal year. Calendar year Partnership and Limited Liability Company returns are generally due April 15th, and fiscal year returns are due the 15th day of the 4th month following the end of the fiscal year.

The payment of the annual entity tax of \$250 and any additional composite tax is due on or before the original due date of the return.

Entities holding Federal extensions may file thirty days after the extended Federal due date. Entities requiring only a Vermont

extension may file **Form BA-403, Application for Extension of Time to File Vermont Corporate/Business Income Tax Return**, by the original return due date. ***An extension of time to file does not extend the time to pay the tax due.*** Any tax due, including the Vermont minimum tax, must be paid by the original due date of the return. Any tax due which is unpaid by the original due date will accrue interest and late payment penalties.

What to Include with the filing:

- Form BI-471
- Form BA-402 – Required if the entity had income, loss, or activity in Vermont and in another jurisdiction.
- Schedule BI-472 (S-Corps) or BI-473 (Partnership/LLC) – Required if the entity has non-Vermont-resident owners. Entities owned 100% by Vermont residents may complete and submit the schedule, or may use the schedule to assist in preparation of Schedules K-1VT.
- Schedule K-1VT – Required for each shareholder, partner, or member. For entities with more than 100 owners, information may be presented in summary or list form rather than on the K-1VT. However, if the entity made required estimated payments on behalf of non-resident owners, **Schedule K-1VT must be properly prepared in order that the owners receive proper credit for the payments.**

- Vermont Statements or Explanations – as required by the instructions below
- Federal Information – The first 4 or 5 pages, as appropriate, of the federal income tax return filed. Federal Schedule K-1s are not required with the original filing. However, the Vermont Department of Taxes reserves the right to require a complete copy of the federal income tax returns and all federal schedules at any point during review or audit of the Vermont filing.

Estimated Taxes and Estimated Payments

For tax years beginning January 1, 1997, Subchapter S Corporations, Partnerships and Limited Liability Companies are given pass-through tax treatment whereby tax is imposed on the income of the business only at the shareholder, partner or member level. The pass-through entity is liable for the minimum annual (entity) tax of \$250 for each taxable year beginning on or after January 1, 1998. **The entity is also obligated to make payments for nonresident shareholders, partners or members for the income attributable to Vermont at the second lowest marginal rate. Each payment is a credit against the shareholder's, partner's, or member's individual income tax liability.** Estimated payments are due on the 15th day of the 4th, 6th and 9th months of the tax year and the 1st month of the subsequent year. For calendar year entities, these dates are normally April 15th, June 15th, September 15th, and January 15th. These payments are made using **Form WH-435, Estimated Income Tax Payments For Nonresident Shareholders, Partners or Members.** *Other methods of payment may result in both the entity and its members not receiving proper credit.* **** Certain S Corporations, Partnerships and Limited Liability Companies may file and remit the estimated tax payments on behalf of nonresident shareholders, partners and members annually, on January 15th, instead of quarterly. To qualify, the entity must have a single (nonresident) shareholder, partner or member and a tax liability of \$250 or less in the prior year, or 2 or more shareholders, partners or members and a tax liability of \$500 or less in the prior year.**

Technical Bulletin 5 (TB-05) provides for a “catch-up payment” for estimated payments due on or after April 15, 2005. This “catch-up payment”, if required, is made at the time that the entity files its business income tax return or extension request. The “catch-up payment” is sent in with a completed Form WH-435 and the payment.

If any partner or member is another entity, the minimum annual tax is \$250 for each one. For additional information see VT Technical Bulletin 5 (TB-05) and VT Technical Bulletin 6 (TB-06) at our web site <http://tax.vermont.gov> under the headings of “Legal Interpretations” and “Forms”, respectively.

Interest, Late Fees, and Penalties

Interest is charged on payments not made on or by the statutory due date. The rate of interest is established each year with reference to the average prime rate.

Payments not made and returns not filed when due are subject to a failure to pay/file penalty of 5% per month of the outstanding liability up to 25% for taxable years beginning on or after January 1, 2002. If the filing is over 60 days late from the original due date, even if no tax is due, a \$50 late penalty applies unless timely filed under extension. The Commissioner of Taxes may abate penalties for reasonable cause.

Consolidated Returns

Affiliated entities with identical ownership may elect to file a consolidated Vermont return. Income of Subchapter S Subsidiaries (QSSS's) are included in the parent's return if it is included in the

parent's Federal return. A consolidated Vermont return must include only entities that have income allocated or apportioned to Vermont. To elect the consolidated Vermont return, you must file Form BA-410, Affiliation Schedule, with Form BI-471, Business Income Tax Return, each year. Once the election has been made, entities must continue filing on a consolidated basis until the Commissioner of Taxes authorizes separate filing. (Refer to Form BA-410 for further guidance.) **NOTE:** The Corporate Income Tax Affiliation Schedule, Form BA-410, is used by both Corporate and Business Income Tax filers.

Composite Returns

(See Technical Bulletin (TB-05))

Definition: A composite return is a return filed by an entity on behalf of its eligible nonresident shareholders, partners or members stating the income allocable to each shareholder, partner or member. Composite returns relieve the included shareholders, partners or members from the responsibility of filing individual income tax returns.

Eligible nonresident shareholders, partners or members: In order to be eligible for inclusion on a composite return, a nonresident shareholder, partner or member cannot have any income taxable to the State of Vermont other than that which is to be included in the composite return; and cannot have income attributable to Vermont in excess of \$300,000.

Who May File: Any entity with eligible nonresident shareholders, partners or members may file an election for composite filing. An election for composite filing shall be valid for a period of five years unless the election is revoked for failure to meet the requirements for composite filing. Such an election shall be made prior to the date that the first quarterly estimated payment is due.

Every eligible nonresident shareholder, partner or member must be included in a composite filing unless the taxpayer has specifically applied for and received permission from the Department to exclude a specific eligible nonresident shareholder, partner or member.

In the event that an entity applies for and receives permission to exclude specific eligible nonresident shareholders, partners or members, such permission shall constitute an election to exclude such person for a period of not less than five years.

Tax Rate: The composite filing tax rate is **8.5%**.

In no event shall the pro rata composite tax attributable to a non natural shareholder, partner or member be less than the minimum tax due that would otherwise have been due from that entity if it had not been relieved of a Vermont filing requirement because of its inclusion in the composite filing.

Refunds: To the extent that the composite tax due is less than the estimated tax payments made by the entity on behalf of its nonresident shareholders, partners or members, the refund shall be paid to the entity and not to the individual shareholders, partners or members.

Other requirements: A signature on a composite return indicates that the information presented on that return is true, correct and complete. Nonetheless, the Department of Taxes may contact the Subchapter S Corporation, Partnership, or Limited Liability Company for further information about the return. It is recommended that composite filers maintain a power of attorney (POA) with their records that is signed by each qualified nonresident shareholder, partner or member. The POA gives the Sub-chapter S Corporation, Partnership or Limited Liability Company the authority to act on the shareholder's, partner's or member's behalf. The Department may ask the composite filer to submit a copy of a POA before disclosing confidential information pertaining to the return.

See the Department of Taxes' web site under "Forms" for POA requirements effective July 1, 2002. POA's executed prior to July 1, 2002 are still valid.

Facsimile Substitute Forms

Any facsimile or substitute form must be approved by the Department of Taxes prior to its use. If you use computer-generated returns, the software company is responsible for requesting approval and receiving an assigned bar code. **A \$25 fee may be assessed for a taxpayer or preparer who files returns that**

cannot be processed or require special steps to process. Call (802) 828-2512 for further information on facsimile or substitute forms.

Appeals

All appeals for any return adjustment, assessment, bill, and reduced refund should be addressed to: Vermont Department of Taxes, PO Box 1645, Montpelier, VT 05601-1645. Appeals must be received within 60 days of the notice of adjustment, assessment, or denial of refund.

FORM BI-471 **2010 BUSINESS INCOME TAX RETURN INSTRUCTIONS**

Please use blue or black ink only.

Please do not staple or bind your return. You may use binder clips, paper clips or rubber bands.

HEADER INFORMATION - Please complete all fields that apply.

Name/Address Print or type the entity name and address in the space provided. Check the "**International**" box if the address is outside the United States. Check the "**Computer-Generated**" box if you do not want us to send you a blank form next year.

Box A Check all applicable boxes for the characteristic(s) of the return. If filing as a composite filer, note that you are making a binding election. See Technical Bulletin (TB-#5).

Box B Enter your **Federal Identification Number**. Enter the **beginning and ending dates of the fiscal year in the requested format (YYYYMMDD)**.

Box C Enter the primary 6-digit North American Industrial Classification System (NAICS) number. See www.census.gov/naics if you do not know your company's code.

Box D Check the box indicating the Federal tax form filed. See Line 1 instructions below if the entity is permitted to file as an individual/sole proprietor.

Boxes E, F, G - Answer the three questions.

Box H - Vermont income, including income passed through to individuals, must be calculated without regard for federal "bonus" depreciation allowed for 2008 assets and certain 2009 and 2010 assets under IRC 168(k). If the entity took advantage of the bonus depreciation provisions, enter the net adjustment to entity income if the bonus depreciation was not allowed. Attach a statement to detail the difference. If the entity did not take advantage of the bonus depreciation provisions in either 2008 or 2009, enter "0."

Tax Computation Section

Exceptions

SMALL FARMS as defined in Title 32 V.S.A. §5832(2)(A), pay an annual entity tax of \$75.00. The entity must be solely owned by active participants and have gross receipts of less than \$100,000. A real estate venture is not considered a farm. Partnerships and LLCs must provide a copy of the Federal Schedule F.

ENTITIES with NO VERMONT ACTIVITY or TAXABLE INVESTMENTS are not required to pay the annual entity tax.

PARTNERSHIPS electing **NOT** to be **TAXED AS PARTNERSHIPS**, under Internal Revenue Code Sec. 761 or Check-the-Box Regulations are not required to pay the annual entity tax. **Provide a statement as to the election being taken and cite the authority for the election.**

QUALIFIED SUBCHAPTER S SUBSIDIARIES permitted to file with their parent corporation under the Internal Revenue Code are not required to pay the annual entity tax. However, to establish

the affiliation, **Form BA-410, Affiliation Schedule**, is required with the return of the parent corporation. The Parent corporation is required to file a Vermont business income tax return and is subject to the minimum tax.

Line-by-Line Instructions

Line 1 Enter the minimum entity tax of \$250. Enter multiples of the minimum tax if filing a composite return including entities (not just individuals) and composite tax is less than what the minimum tax would be if each entity filed separately. If you are not filing a composite return, then go to Line 4. If a composite filer, see Technical Bulletin (TB-05).

Line 2 For Composite returns only, enter the income passed through to nonresidents and taxed at the composite rate. This is the number from Form BI-472, Line 12 or BI-473, Line 17.

Line 3 Multiply Line 2 by the composite tax rate of 8.50%. Enter the result.

Line 4 Subchapter S Corporations subject to federal income tax on items such as built-in gains, capital gains, or LIFO recapture, apply the corporate income tax rate provided in the instructions for Form CO-411 to the Vermont apportioned/allocated tax base. Enter the tax due on Line 4. Provide a statement that details the nature and calculation of the tax amount.

Line 5 Total Tax Due Add Lines 1, 3, and 4.

Line 6 Payments and Credits Enter amount from side 2, Line 16.

Line 7 Balance Due If Line 5 is greater than Line 6, enter the difference and include check payable to "Vermont Department of Taxes." All tax is due at the original filing date, regardless of extension of time to file the return.

Line 8 Refund If Line 6 is greater than Line 5, enter the amount, if any, you would like refunded.

Line 8a Credit Forward If Line 6 is greater than Line 5, enter the amount, if any, you would like credited to the next tax year.

Schedule 1 Tax Payments and Credits Computations

Line 9 Enter the amount of the 2009 overpayment/credit applied to the 2010 taxes.

Line 10 Enter the amount of your 2010 estimated tax Payments and any payment made with your extension application.

Lines 11, 12, and 13. (Composite Filers Only)

(Estimated payments and credits usually pass through to the owners. For a composite filing, they are credited against tax due at the entity level).

Line 11 Enter the amount of payments from nonresident real estate withholding (from **Form RW-171, Schedule A**) paid by another entity on behalf of this one, to be credited against composite tax liability.

Line 12 Enter the amount of 2010 estimated tax payments made for you by a pass-through entity of which you are a nonresident shareholder, partner, or member, to be credited against composite tax liability (This would be a payment made by another entity on your behalf using **Form WH-435**.)

Line 13 Enter the total amount of Vermont tax credits applied. Attach Form BA-404. This line is only for those entities filing a composite return and reporting the portion of those credits for those nonresidents who have consented to be included in this composite filing. Credits can be applied to offset a maximum of 80% of tax liability, and generally may not reduce tax beneath the \$250 minimum entity tax. Include Form BA-404 and all documentation required by the credit program in which you participate. See the additional notes regarding credits below.

Line 14 Add Lines 9 and 10 and 11, 12, and 13, if a composite filer.

Line 15 Use this line only if filing a **composite return**. Enter the total estimated payments made for all nonresidents of Vermont who have consented to be included in this composite filing. These payments would have been made with Form(s) WH-435 indicated as composite.

Line 16 Total payments and credits. Add Lines 14 and 15. Enter the total here and on Side 1, Line 6.

Line 17 If the business had non-Vermont-resident owners, enter the total amount paid as nonresident estimated payments for 2010, including any catch-up payment, if applicable. Include any amount paid towards composite tax liability. Also include any amount of nonresident estimated payments made by another entity on your company's behalf. If such payments were made, include a statement indicating the name(s) and FEIN(s) of the company(ies) that made the payment(s), and the amount of payment(s).

Line I Enter the total number of shareholders, partners or members receiving a distributive share of income or loss.

Line J Of the above, how many are Vermont residents? (See TB-#5 and TB-06 for residency guidelines for entities.)

Line K How many are non-Vermont residents?

Signature Section

The return must be signed by an officer or agent of the entity and the preparer. Please make your check payable to the **Vermont Department of Taxes**. Please write your FEIN number on your check and clip your check to the front of your return. Please do not staple the check to your return.

Send **Form BI-471**, the first 4 pages of the federal return, and all supporting Vermont schedules and statements to the address listed below. If authorizing the Department of Taxes to discuss this return and attachments with your preparer, check "Yes" for this question. This will not authorize the Department of Taxes to discuss the

filing status of the shareholders, partners or members. Each individual must authorize such disclosure.

Notes on Pass-through Tax Credits:

Unless a composite return is being filed, credits are passed through to the shareholders, partners, or members and reported on the Schedule K-1VT and Form BA-404. Credit calculation schedules and credit allocation schedules must be attached to the return, along with any other documentation required by the credit program. The credit amounts available are generally limited to 80% of the taxpayer(s) Vermont tax on the Schedule K-1VT income only, excluding wages received from the entity. The credit available is calculated as follows: Divide the Schedule K-1VT net income by the individual's Vermont adjusted gross income (VT AGI). Multiply the results by the individual's pre-credit Vermont income tax and then multiply that by 80%. The result is the individual's available credit from all sources. These credits can be applied against 80% of the entity's composite tax liability but may not reduce the liability below the minimum entity tax. For each Economic Advancement Tax Incentive (EATI) credit earned, a credit calculation schedule, a credit allocation schedule, a copy of the original authorizing document, and a copy of the EATI Annual Activity Report must be attached to the return. Credits in the EATI program are authorized by the VT Economic Progress Council (VEPC) {(802) 828-5256} and include **payroll, workforce development, research and development, export, capital investment, high-tech growth, sustainable technology research & development, and sustainable technology export credits**. The Downtown Development Board {(802) 828-3047} authorizes tax credits for **facade and code compliance work** on older or historic buildings and for the installation of **platform lifts, elevators, or sprinkler systems** for qualified buildings located within Designated Downtown districts. For buildings located within designated Village Centers, the Downtown Development Board authorizes tax credits for the **Sustainable Rehabilitation of Certified Historic Buildings** and for **Code Improvements to Commercial Buildings**. The Vermont Housing Finance Agency {(802) 864-5746} authorizes the **Affordable Housing** incentives. Claiming these non-EATI credits, as well as the Business Solar Energy Investment credit, requires a credit calculation schedule, a credit allocation schedule, a copy of the original authorizing document (as applicable), and substantiating documentation which must be attached to the return. See the instructions for Form BA-404 for more guidance. The VT Department of Taxes has final authority in applying any credits against tax liability. Call (802) 828-5723 if you have questions regarding credit calculations or requirements.

Mailing address:

Vermont Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Taxpayer Services: (802) 828-5723
Email Address: tax-corpincome@state.vt.us
Web Site Address: <http://tax.vermont.gov>
Fax: (802) 828-5787
Forms: (802) 828-2515